

SENATE BILL 703

J1, C2, Q7

0lr2574
CF HB 957

By: **Senators Garagiola, Forehand, Kelley, King, Lenett, Madaleno, Muse, Pinsky, and Robey**

Introduced and read first time: February 10, 2010

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 3, 2010

CHAPTER _____

1 AN ACT concerning

2 **Tobacco-Related Products – ~~Definitions and~~ Distribution to Minors**

3 FOR the purpose of ~~altering the definition of “cigarette” in connection with tobacco~~
4 ~~taxes, the regulation of cigarette business, the sale of cigarettes below cost, and~~
5 ~~certain cigarette fire safety standards to include certain tobacco products that~~
6 ~~are wrapped in certain substances and weigh less than a certain amount and~~
7 ~~are likely to be offered to, or purchased by, consumers as cigarettes;~~ prohibiting
8 the distribution of certain tobacco products, cigarette rolling papers, and
9 tobacco-related coupons to minors; requiring photo identification checks in
10 connection with the distribution of certain tobacco-related products to minors;
11 requiring photo identification checks in connection with the distribution of
12 certain tobacco-related products to minors; prohibiting minors from purchasing,
13 possessing, or using cigarette rolling papers or certain tobacco-related products;
14 repealing certain prohibitions, procedures, and dispositions relating to the
15 possession or use of tobacco products by minors rendered inconsistent with this
16 Act; establishing certain civil penalties; repealing a county-specific provision
17 concerning civil enforcement of youth tobacco violations applicable to Carroll
18 County, Cecil County, Garrett County, and St. Mary’s County; providing that
19 this Act does not preempt any county or municipal law that regulates tobacco
20 products; defining certain terms; providing for the application of this Act;
21 stating the intent of the General Assembly as to certain provisions of this Act;
22 and generally relating to tobacco-related products and distribution to minors.

23 BY repealing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article 24 – Political Subdivisions – Miscellaneous Provisions
2 Section 15–102.1
3 Annotated Code of Maryland
4 (2005 Replacement Volume and 2009 Supplement)

5 BY repealing
6 Article – Criminal Law
7 Section 10–108
8 Annotated Code of Maryland
9 (2002 Volume and 2009 Supplement)

10 ~~BY repealing and reenacting, with amendments,~~
11 ~~Article – Business Regulation~~
12 ~~Section 16–101(b) and 16–601~~
13 ~~Annotated Code of Maryland~~
14 ~~(2004 Replacement Volume and 2009 Supplement)~~

15 ~~BY repealing and reenacting, with amendments,~~
16 ~~Article – Commercial Law~~
17 ~~Section 11–501(e)~~
18 ~~Annotated Code of Maryland~~
19 ~~(2005 Replacement Volume and 2009 Supplement)~~

20 BY adding to
21 Article – Health – General
22 Section 24–1701 through 24–1707 to be under the new subtitle “Subtitle 17.
23 Distribution of Tobacco–Related Products to Minors”
24 Annotated Code of Maryland
25 (2009 Replacement Volume)

26 ~~BY repealing and reenacting, with amendments,~~
27 ~~Article – Tax – General~~
28 ~~Section 12–101(b)~~
29 ~~Annotated Code of Maryland~~
30 ~~(2004 Replacement Volume and 2009 Supplement)~~

31 ~~BY repealing and reenacting, without amendments,~~
32 ~~Article – Tax – General~~
33 ~~Section 12–101(e)~~
34 ~~Annotated Code of Maryland~~
35 ~~(2004 Replacement Volume and 2009 Supplement)~~

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
37 MARYLAND, That Section(s) 15–102.1 of Article 24 – Political Subdivisions –
38 Miscellaneous Provisions of the Annotated Code of Maryland be repealed.

1 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 10–108 of
2 Article – Criminal Law of the Annotated Code of Maryland be repealed.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 ~~Article – Business Regulation~~

6 ~~§ 16–101.~~

7 (b) ~~“Cigarette” means any size or shaped roll for smoking that is made of~~
8 ~~tobacco or tobacco mixed with another ingredient and:~~

9 ~~(1) IS WRAPPED IN PAPER OR IN ANY OTHER MATERIAL EXCEPT TOBACCO;~~

10 ~~(2) IS WRAPPED IN PAPER CONTAINING TOBACCO AND, WITH THE~~
11 ~~WRAPPER, WEIGHS LESS THAN 3 POUNDS PER THOUSAND CIGARETTES; OR~~

12 ~~(3) (I) CONTAINS TOBACCO, IN ANY FORM, THAT IS~~
13 ~~FUNCTIONAL IN THE PRODUCT; AND~~

14 ~~(II) IS LIKELY TO BE OFFERED TO OR PURCHASED BY~~
15 ~~CONSUMERS AS A CIGARETTE, AS DESCRIBED IN ITEMS (1) AND (2) OF THIS~~
16 ~~SUBSECTION, BECAUSE OF:~~

17 ~~1. APPEARANCE;~~

18 ~~2. THE TYPE OF TOBACCO USED IN THE FILLER; OR~~

19 ~~3. PACKAGING.~~

20 ~~§ 16–601.~~

21 (a) ~~In this subtitle the following words have the meanings indicated.~~

22 (b) ~~“Cigarette” [has the meaning stated in § 16–101 of this title] MEANS ANY~~
23 ~~SIZE OR SHAPED ROLL FOR SMOKING THAT:~~

24 ~~(1) IS MADE OF TOBACCO OR TOBACCO MIXED WITH ANOTHER~~
25 ~~INGREDIENT; AND~~

26 ~~(2) IS WRAPPED IN PAPER OR ANY OTHER MATERIAL EXCEPT~~
27 ~~TOBACCO.~~

28 (c) ~~“Commission” means the State Fire Prevention Commission.~~

1 ~~(d) "Consumer testing" means an assessment of cigarettes that is conducted~~
 2 ~~by a manufacturer or conducted under the control and direction of a manufacturer for~~
 3 ~~the purpose of evaluating consumer acceptance of the cigarettes by using only the~~
 4 ~~quantity of cigarettes that is reasonably necessary for the assessment.~~

5 ~~(e) "Manufacturer" has the meaning stated in § 16-201 of this title.~~

6 ~~(f) "Quality control and quality assurance program" means laboratory~~
 7 ~~procedures implemented to ensure that:~~

8 ~~(1) operator bias, systematic and nonsystematic methodological errors,~~
 9 ~~and equipment-related problems do not affect the results of the testing; and~~

10 ~~(2) the testing repeatability remains within the required repeatability~~
 11 ~~value for any test trial used to certify cigarettes under this subtitle.~~

12 ~~(g) "Repeatability" means the range of values within which the repeat results~~
 13 ~~of cigarette test trials from a single laboratory fall 95% of the time.~~

14 ~~(h) "Retailer" has the meaning stated in § 16-201 of this title.~~

15 ~~(i) (1) "Sale" means the exchange or transfer, or the agreement to~~
 16 ~~exchange or transfer, title or possession of property in any manner or by any means~~
 17 ~~for consideration.~~

18 ~~(2) "Sale" includes:~~

19 ~~(i) the giving or distribution of cigarettes as samples, prizes,~~
 20 ~~gifts, or in connection with consumer testing; and~~

21 ~~(ii) the exchange of cigarettes for any consideration other than~~
 22 ~~money.~~

23 ~~(j) "Subwholesaler" has the meaning stated in § 16-201 of this title.~~

24 ~~(k) "Vending machine operator" has the meaning stated in § 16-201 of this~~
 25 ~~title.~~

26 ~~(l) "Wholesaler" has the meaning stated in § 16-201 of this title.~~

27 ~~Article Commercial Law~~

28 ~~11-501.~~

29 ~~(e) [(1) "Cigarettes"] "CIGARETTE" means any size or shaped roll for~~
 30 ~~smoking that is made of tobacco or tobacco mixed with another ingredient and:~~

1 (1) A TOBACCO PRODUCT OR CIGARETTE ROLLING PAPERS IF
2 THE MINOR IS ACTING AS THE AGENT OF THE MINOR'S EMPLOYER IF THE
3 EMPLOYER DISTRIBUTES TOBACCO PRODUCTS OR CIGARETTE ROLLING PAPERS
4 FOR COMMERCIAL PURPOSES; OR

5 (2) A COUPON THAT IS REDEEMABLE FOR A TOBACCO PRODUCT
6 IF THE COUPON:

7 (I) IS CONTAINED IN A NEWSPAPER, MAGAZINE, OR ANY
8 OTHER TYPE OF PUBLICATION, AND THE COUPON IS INCIDENTAL TO THE
9 PRIMARY PURPOSE OF THE PUBLICATION; OR

10 (II) IS SENT THROUGH THE MAIL.

11 **24-1703.**

12 (A) A PERSON MAY NOT DISTRIBUTE TO A MINOR:

13 (1) A TOBACCO PRODUCT;

14 (2) CIGARETTE ROLLING PAPERS; OR

15 (3) A COUPON REDEEMABLE FOR A TOBACCO PRODUCT.

16 (B) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING THIS
17 SECTION THAT THE INDIVIDUAL, IN GOOD FAITH, ACTED IN ACCORDANCE WITH
18 § 24-1704 OF THIS SUBTITLE.

19 **24-1704.**

20 (A) THIS SECTION DOES NOT APPLY IF THE PURCHASER OR RECIPIENT
21 REASONABLY APPEARS TO BE AT LEAST ~~28~~ 27 YEARS OLD.

22 (B) BEFORE DISTRIBUTING A TOBACCO PRODUCT, CIGARETTE ROLLING
23 PAPERS, OR A COUPON REDEEMABLE FOR A TOBACCO PRODUCT THE
24 INDIVIDUAL DISTRIBUTING THE PRODUCT SHALL EXAMINE THE PROSPECTIVE
25 PURCHASER'S OR RECIPIENT'S DRIVER'S LICENSE OR OTHER VALID
26 IDENTIFICATION ISSUED BY AN EMPLOYER, A GOVERNMENT UNIT, OR AN
27 INSTITUTION OF HIGHER EDUCATION TO ENSURE THAT:

28 (1) THE PHOTOGRAPH IN THE IDENTIFICATION REASONABLY
29 APPEARS TO BE THAT OF THE PROSPECTIVE PURCHASER OR RECIPIENT;

1 **(2) THE BIRTH DATE ON THE IDENTIFICATION INDICATES THAT**
2 **THE BEARER IS AT LEAST 18 YEARS OLD; AND**

3 **(3) THERE IS NO REASONABLE INDICATION THAT THE**
4 **IDENTIFICATION HAS BEEN TAMPERED WITH, ALTERED, OR FORGED.**

5 **24-1705.**

6 **A MINOR MAY NOT:**

7 **(1) PURCHASE, POSSESS, OR USE CIGARETTE ROLLING PAPERS**
8 **OR A TOBACCO PRODUCT; OR**

9 **(2) OBTAIN OR ATTEMPT TO OBTAIN A TOBACCO PRODUCT OR**
10 **CIGARETTE ROLLING PAPERS BY USING A FORM OF IDENTIFICATION THAT:**

11 **(I) IS FALSIFIED; OR**

12 **(II) IDENTIFIES AN INDIVIDUAL OTHER THAN THE MINOR.**

13 **24-1706.**

14 **(A) A PERSON WHO VIOLATES § 24-1703 OR § 24-1704 OF THIS**
15 **SUBTITLE COMMITS A CIVIL INFRACTION AND IS SUBJECT TO A CIVIL PENALTY**
16 **OF UP TO:**

17 **(1) \$300 FOR THE FIRST VIOLATION; AND**

18 **(2) \$500 FOR A SECOND VIOLATION WITHIN A 24-MONTH PERIOD**
19 **FROM THE PREVIOUS CITATION; AND**

20 **(3) \$750 FOR ANY SUBSEQUENT VIOLATION WITHIN A 24-MONTH**
21 **PERIOD FROM THE PREVIOUS CITATION.**

22 **(B) A PERSON WHO VIOLATES § 24-1705 OF THIS SUBTITLE COMMITS A**
23 **CIVIL INFRACTION AND IS SUBJECT TO:**

24 **(1) A CIVIL PENALTY OF \$50; AND**

25 **(2) REFERRAL TO A SMOKING CESSATION PROGRAM IF**
26 **AVAILABLE THROUGH THE LOCAL HEALTH DEPARTMENT.**

27 **24-1707.**

1 (A) A COUNTY HEALTH OFFICER, A DESIGNEE OF A COUNTY HEALTH
 2 OFFICER, OR A LAW ENFORCEMENT OFFICER MAY ISSUE A CIVIL CITATION TO A
 3 PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IN THE SAME
 4 MANNER DESCRIBED UNDER ARTICLE 24, § 15-103 OF THE CODE.

5 (B) JUDICIAL PROCEEDINGS FOR VIOLATIONS OF THIS SUBTITLE ARE
 6 GOVERNED BY ARTICLE 24, § 15-104 OF THE CODE.

7 ~~Article Tax General~~

8 ~~12-101.~~

9 (b) ~~“Cigarette” means any size or shaped roll for smoking that is made of~~
 10 ~~tobacco or tobacco mixed with another ingredient and:~~

11 ~~(1) IS WRAPPED IN PAPER OR IN ANY OTHER MATERIAL EXCEPT TOBACCO;~~

12 ~~(2) IS WRAPPED IN PAPER CONTAINING TOBACCO AND, WITH THE~~
 13 ~~WRAPPER, WEIGHS LESS THAN 3 POUNDS PER THOUSAND CIGARETTES; OR~~

14 ~~(3) (I) CONTAINS TOBACCO, IN ANY FORM, THAT IS~~
 15 ~~FUNCTIONAL IN THE PRODUCT; AND~~

16 ~~(II) IS LIKELY TO BE OFFERED TO OR PURCHASED BY~~
 17 ~~CONSUMERS AS A CIGARETTE, AS DESCRIBED IN ITEMS (1) AND (2) OF THIS~~
 18 ~~SUBSECTION, BECAUSE OF:~~

19 ~~1. APPEARANCE;~~

20 ~~2. THE TYPE OF TOBACCO USED IN THE FILLER; OR~~

21 ~~3. PACKAGING.~~

22 (c) ~~“Other tobacco product” means:~~

23 ~~(1) any cigar or roll for smoking, other than a cigarette, made in whole~~
 24 ~~or in part of tobacco; or~~

25 ~~(2) any other tobacco or product made primarily from tobacco, other~~
 26 ~~than a cigarette, that is intended for consumption by smoking or chewing or as snuff.~~

27 SECTION 4. AND BE IT FURTHER ENACTED, That this Act does not
 28 preempt any county or municipal law that regulates tobacco products.

29 SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the
 30 General Assembly that the provisions of § 24-1704(b) of the Health – General Article,

1 as enacted by Section 3 of this Act, shall be construed as conforming to the Federal
2 Smoking Prevention and Control Act and any regulations promulgated under it.

3 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.